

# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions

of the United States Court of Appeals for  
the Federal Circuit and the United  
States Court of International Trade

Vol. 19

OCTOBER 30, 1985

No. 44

*This issue contains:*

U.S. Customs Service

T.D. 85-169 Through 85-181

T.D. 85-158 (Change of Effective Date)

General Notice

Proposed Rulemakings

U.S. Court of Appeals for the Federal Circuit

Appeal 85-1277

THE DEPARTMENT OF THE TREASURY  
U.S. Customs Service

## **NOTICE**

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

# U.S. Customs Service

## Treasury Decisions

T.D. 85-169

### Quarterly Rates of Exchange

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Quarter beginning: October 1, 1985 through December 31, 1985.

Country	Name of currency	U.S. dollars
Australia .....	Dollar .....	.71100
Austria .....	Schilling .....	.53727
Belgium .....	Franc .....	.018615
Brazil .....	Cruziero .....	.000127
Canada .....	Dollar .....	.729554
China, P.R. ....	Renminbi yuan .....	.334739
Denmark .....	Krone .....	.103573
Finland .....	Markka .....	.175131
France .....	Franc .....	.123571
Germany .....	Deutsche mark .....	.377003
Hong Kong .....	Dollar .....	.128559
India .....	Rupee .....	.083893
Iran .....	Rial .....	N/A
Ireland .....	Pound .....	1.1680
Italy .....	Lira .....	.000558
Japan .....	Yen .....	.004651
Malaysia .....	Dollar .....	.410509
Mexico .....	Peso .....	.002660
Netherlands .....	Guilder .....	.334448
New Zealand .....	Dollar .....	.55650
Norway .....	Krone .....	.125945
Phillippines .....	Peso .....	N/A

Country	Name of currency	U.S. dollars
Portugal.....	Escudo.....	.005988
Republic of So. Africa.....	Rand.....	.39800
Singapore.....	Dollar.....	.469484
Spain.....	Peseta.....	.006139
Sri-Lanka.....	Rupee.....	.036506
Sweden.....	Krona.....	.125313
Switzerland.....	Franc.....	.461255
Thailand.....	Baht (Tical).....	.037922
United Kingdom.....	Pound.....	1.4105
Venezuela.....	Bolivar.....	N/A

ANGELA DEGAETANO,  
*Chief,*  
*Customs Information Exchange.*

### T.D. 85-170

#### Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

September 2, 1985, Labor Day Holiday.

**Greece drachma:**

September 3, 1985.....	\$0.007358
September 4, 1985.....	.007342
September 5, 1985.....	.007334
September 6, 1985.....	.007153

**Israel shekel:**

September 3-6, 1985.....	N/A
--------------------------	-----

**South Korea won:**

September 3, 1985.....	.001122
September 4-5, 1985.....	.001120
September 6, 1985.....	.001119

**Taiwan N.T. dollar:**

September 3, 1985.....	.024704
September 4, 1985.....	.024722

September 5, 1985.....	.024728
September 6, 1985.....	.024728

(LIQ-03-01 S:COM CIE)

Dated: September 6, 1985.

ANGELA DeGAETANO,  
*Chief,*  
*Customs Information Exchange.*

T.D. 85-171

Foreign Currencies—Daily Rates for Countries Not on Quarterly  
List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

## Brazil cruzeiro:

September 9, 1985.....	\$0.000138
September 10, 1985.....	.000137
September 11, 1985.....	.000136
September 12, 1985.....	.000135
September 13, 1985.....	.000134

## Mexico peso:

September 9, 1985.....	.002755
September 10, 1985.....	.002710
September 11, 1985.....	.002732
September 12, 1985.....	.002674
September 13, 1985.....	.002653

## Netherlands guilder:

September 13, 1985.....	.306890
-------------------------	---------

## New Zealand dollar:

September 9, 1985.....	.53200
September 10, 1985.....	.51850
September 11, 1985.....	.51720
September 12, 1985.....	.52400
September 13, 1985.....	.52420

## Republic of South Africa rand:

September 9, 1985.....	.38400
------------------------	--------

September 10, 1985 .....	.40000
September 11, 1985 .....	.40400
September 12, 1985 .....	.40350
September 13, 1985 .....	.40800
Switzerland franc:	
September 9, 1985 .....	.412712
September 10, 1985 .....	.412201
September 12, 1985 .....	.412371
September 13, 1985 .....	.417885

(LIQ-03-01 S:COM CIE)

Dated: September 13, 1985.

ANGELA DeGAETANO,  
*Chief,*  
*Customs Information Exchange.*

---

T.D. 85-172

### Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
September 16, 1985 .....	\$0.007161
September 17, 1985 .....	.007189
September 18, 1985 .....	.007143
September 19, 1985 .....	.007168
September 20, 1985 .....	.007299
Israel shekel:	
September 16-20, 1985 .....	N/A
South Korea won:	
September 16-20, 1985 .....	.001118
Taiwan N.T. dollar:	
September 16, 1985 .....	.024734
September 17, 1985 .....	.024752
September 18, 1985 .....	.024746

September 19, 1985.....	.024716
September 20, 1985.....	.024679

(LIQ-03-01 S:COM CIE)

Dated: September 20, 1985.

ANGELA DeGAETANO,  
*Chief,*  
*Customs Information Exchange.*

T.D. 85-173

### Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

## Greece drachma:

September 23, 1985.....	\$0.007505
September 24, 1985.....	.007576
September 25, 1985.....	.007645
September 26, 1985.....	.007663
September 27, 1985.....	.007628

## Israel shekel:

September 23-27, 1985.....	N/A
----------------------------	-----

## South Korea won:

September 23-26, 1985.....	.001118
September 27, 1985.....	N/A

## Taiwan N.T. dollar:

September 23, 1985.....	.024649
September 24, 1985.....	.024667
September 25, 1985.....	.024685
September 26-27, 1985.....	N/A

(LIQ-03-01 S:COM CIE)

Dated: September 27, 1985.

ANGELA DeGAETANO,  
*Chief,*  
*Customs Information Exchange.*

## T.D. 85-174

## Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
September 30, 1985.....	\$0.007587
Israel shekel:	
September 30, 1985.....	N/A
South Korea won:	
September 30, 1985.....	.001119
Taiwan N.T. dollar:	
September 30, 1985.....	N/A

(LIQ-03-01 S:COM CIE)

Dated: September 30, 1985.

ANGELA DEGAETANO,  
Chief,  
Customs Information Exchange.

## T.D. 85-175

## Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-113 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

September 2, 1985, Labor Day Holiday.

Austria schilling:	
September 3, 1985.....	\$0.049875
September 4, 1985.....	.049931
September 5, 1985.....	.049736

<b>Belgium franc:</b>	
September 3, 1985.....	.017289
September 4, 1985.....	.017379
September 5, 1985.....	.017292
<b>Brazil cruzeiro:</b>	
September 3, 1985.....	.000143
September 4, 1985.....	.000140
September 5-6, 1985.....	.000189
<b>Denmark krone:</b>	
September 3, 1985.....	.096665
September 4, 1985.....	.096712
September 5, 1985.....	.096497
<b>France franc:</b>	
September 3, 1985.....	.114679
September 4, 1985.....	.114870
September 5, 1985.....	.114482
<b>Germany deutsche mark:</b>	
September 3, 1985.....	.350385
September 4, 1985.....	.350754
September 5, 1985.....	.349406
<b>Ireland pound:</b>	
September 3, 1985.....	1.0910
September 4, 1985.....	1.0920
September 5, 1985.....	1.0875
<b>Mexico peso:</b>	
September 6, 1985.....	.002786
<b>Netherlands guilder:</b>	
September 3, 1985.....	.311333
September 4, 1985.....	.312110
September 5, 1985.....	.310463
<b>New Zealand dollar:</b>	
September 3, 1985.....	.53800
September 4, 1985.....	.53600
September 5, 1985.....	.53920
September 6, 1985.....	.53500
<b>Republic of South Africa rand:</b>	
September 3, 1985.....	.41000
September 4, 1985.....	.39500
September 5, 1985.....	.39650
September 6, 1985.....	.38500
<b>Switzerland franc:</b>	
September 3, 1985.....	.425170
September 4, 1985.....	.426257

September 5, 1985 .....	.424358
September 6, 1985 .....	.413565
United Kingdom pound:	
September 4, 1985 .....	1.3728

(LIQ-03-01 S:COM CIE)

Dated: September 6, 1985.

ANGELA DeGAETANO,  
*Chief,*  
*Customs Information Exchange.*

T.D. 85-176

## Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-113 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Greece drachma:	
September 9, 1985 .....	\$0.007143
September 10, 1985 .....	.007128
September 11, 1985 .....	.007082
September 12, 1985 .....	.007092
September 13, 1985 .....	.007168
Israel shekel:	
September 9-13, 1985 .....	N/A
South Korea won:	
September 9-13, 1985 .....	.001118
Taiwan N.T. dollar:	
September 9, 1985 .....	.024759
September 10, 1985 .....	.024722
September 11, 1985 .....	.024722
September 12, 1985 .....	.024728
September 13, 1985 .....	N/A

(LIQ-03-01 S:COM CIE)

Dated: September 13, 1985.

ANGELA DeGAETANO,  
Chief,  
Customs Information Exchange.

---

T.D. 85-177

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-113 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
September 16, 1985 .....	\$0.049388
September 17, 1985 .....	.049198
September 20, 1985 .....	.050025
Belgium franc:	
September 16, 1985 .....	.017170
September 20, 1985 .....	.017382
Brazil cruzeiro:	
September 16, 1985 .....	.000134
September 17, 1985 .....	.000133
September 18-19, 1985 .....	.000132
September 20, 1985 .....	.000131
Denmark krone:	
September 20, 1985 .....	.096974
Finland markka:	
September 20, 1985 .....	.166058
France franc:	
September 16, 1985 .....	.113701
September 17, 1985 .....	.113475
September 20, 1985 .....	.115207
Germany deutsche mark:	
September 16, 1985 .....	.346981
September 17, 1985 .....	.345781
September 20, 1985 .....	.351185
Ireland pound:	
September 20, 1985 .....	1.0925

**Mexico peso:**

September 16, 1985.....	.002649
September 17, 1985.....	.002584
September 18, 1985.....	.002591
September 19, 1985.....	.002581
September 20, 1985.....	.002532

**Netherlands guilder:**

September 16, 1985.....	.308642
September 17, 1985.....	.307692
September 18, 1985.....	.306466
September 19, 1985.....	.306748
September 20, 1985.....	.312500

**New Zealand dollar:**

September 16, 1985.....	.52500
September 17, 1985.....	.52750
September 18, 1985.....	.52750
September 19, 1985.....	.52650
September 20, 1985.....	.53300

**Norway krone:**

September 20, 1985.....	.120178
-------------------------	---------

**Republic of South Africa rand:**

September 16, 1985.....	.41250
September 17, 1985.....	.41200
September 18, 1985.....	.39500
September 19, 1985.....	.37700
September 20, 1985.....	.36000

**Switzerland franc:**

September 16, 1985.....	.419639
September 17, 1985.....	.420345
September 18, 1985.....	.418585
September 19, 1985.....	.419639
September 20, 1985.....	.426985

(LIQ-03-01 S:COM CIE)

Dated: September 20, 1985.

ANGELA DeGAETANO,  
Chief,  
Customs Information Exchange.

## T.D. 85-178

## Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-113 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

## Australia dollar:

September 23, 1985.....	\$0.70350
September 24, 1985.....	.70700
September 25, 1985.....	.71300
September 26, 1985.....	.71950
September 27, 1985.....	.71100

## Austria schilling:

September 23, 1985.....	.052083
September 24, 1985.....	.052521
September 25, 1985.....	.053079
September 26, 1985.....	.053447
September 27, 1985.....	.053121

## Belgium franc:

September 23, 1985.....	.017969
September 24, 1985.....	.018165
September 25, 1985.....	.018383
September 26, 1985.....	.018519
September 27, 1985.....	.018416

## Brazil cruzeiro:

September 23-24, 1985.....	N/A
September 25-27, 1985.....	.000129

## Denmark krone:

September 23, 1985.....	.100812
September 24, 1985.....	.112899
September 25, 1985.....	.102564
September 26, 1985.....	.103279
September 27, 1985.....	.102564

## Finland markka:

September 23, 1985.....	.171482
September 24, 1985.....	.172563
September 25, 1985.....	.174292
September 26, 1985.....	.174978
September 27, 1985.....	.173883

**France franc:**

September 23, 1985.....	.119760
September 24, 1985.....	.120627
September 25, 1985.....	.121951
September 26, 1985.....	.123153
September 27, 1985.....	.122287

**Germany deutsche mark:**

September 23, 1985.....	.366032
September 24, 1985.....	.368189
September 25, 1985.....	.373134
September 26, 1985.....	.375728
September 27, 1985.....	.373413

**India rupee:**

September 26-27, 1985.....	.085470
----------------------------	---------

**Ireland pound:**

September 23, 1985.....	1.1340
September 24, 1985.....	1.1420
September 25, 1985.....	1.1535
September 26, 1985.....	1.1620
September 27, 1985.....	1.1520

**Italy lira:**

September 23, 1985.....	.000542
September 24, 1985.....	.000545
September 25, 1985.....	.000549
September 26, 1985.....	.000555
September 27, 1985.....	.000553

**Japan yen:**

September 23, 1985.....	.004312
September 24, 1985.....	.004352
September 25, 1985.....	.004407
September 26, 1985.....	.004539
September 27, 1985.....	.004543

**Mexico peso:**

September 23, 1985.....	.002538
September 24, 1985.....	.002611
September 25, 1985.....	.002597
September 26, 1985.....	.002660
September 27, 1985.....	.002632

**Netherlands guilder:**

September 23, 1985.....	.325203
September 24, 1985.....	.327118
September 25, 1985.....	.330907
September 26, 1985.....	.333111
September 27, 1985.....	.330579

## New Zealand dollar:

September 23, 1985 .....	.54400
September 24, 1985 .....	.54150
September 25, 1985 .....	.53800
September 26, 1985 .....	.53950
September 27, 1985 .....	.54300

## Norway krone:

September 23, 1985 .....	.123062
September 24, 1985 .....	.124023
September 25, 1985 .....	.125376
September 26, 1985 .....	.126103
September 27, 1985 .....	.125471

## Republic of South Africa rand:

September 23, 1985 .....	.39700
September 24, 1985 .....	.38750
September 25, 1985 .....	.38650
September 26, 1985 .....	.39700
September 27, 1985 .....	.39650

## Spain peseta:

September 23, 1985 .....	.006061
September 24, 1985 .....	.006096
September 25, 1985 .....	.006154
September 26, 1985 .....	.006158
September 27, 1985 .....	.006111

## Sweden krona:

September 23, 1985 .....	.122264
September 24, 1985 .....	.123039
September 25, 1985 .....	.124386
September 26, 1985 .....	.124922
September 27, 1985 .....	.123916

## Switzerland franc:

September 23, 1985 .....	.446229
September 24, 1985 .....	.448029
September 25, 1985 .....	.453309
September 26, 1985 .....	.456204
September 27, 1985 .....	.455166

## United Kingdom pound:

September 23, 1985 .....	1.4270
September 24, 1985 .....	1.4315
September 25, 1985 .....	1.4375
September 26, 1985 .....	1.4370
September 27, 1985 .....	1.4025

(LIQ 03-01 S:COM CIE)

Dated: September 27, 1985.

ANGELA DeGAFTANO,  
*Chief,*  
*Customs Information Exchange.*

---

T.D. 85-179

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-113 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:	
September 30, 1985.....	\$0.70200
Austria schilling:	
September 30, 1985.....	.053170
Belgium franc:	
September 30, 1985.....	.018420
Brazil cruzeiro:	
September 30, 1985.....	.000128
Denmark krone:	
September 30, 1985.....	.102438
Finland markka:	
September 30, 1985.....	.173913
France franc:	
September 30, 1985.....	.122362
Germany deutsche mark:	
September 30, 1985.....	.373274
Ireland pound:	
September 30, 1985.....	1.1515
Italy lira:	
September 30, 1985.....	.000554
Japan yen:	
September 30, 1985.....	.004619
Mexico peso:	
September 30, 1985.....	.002681

Netherlands guilder:	
September 30, 1985 .....	.331510
New Zealand dollar:	
September 30, 1985 .....	.54750
Norway krone:	
September 30, 1985 .....	.125392
Republic of South Africa rand:	
September 30, 1985 .....	.39050
Spain peseta:	
September 30, 1985 .....	.006107
Sweden krona:	
September 30, 1985 .....	.124224
Switzerland franc:	
September 30, 1985 .....	.455581
United Kingdom pound:	
September 30, 1985 .....	1.4085

(LIQ-03-01 S:COM CIE)

Dated: September 30, 1985.

ANGELA DeGAETANO,  
Chief,  
Customs Information Exchange.

---

19 CFR Parts 18 and 114

(T.D. 85-180)

Customs Regulations Amendments Relating to Limitation of Liability of Domestic Guaranteeing Associations Under TIR Carnets and Other Matters

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Customs is amending its regulations relating to the limitation on liability of U.S. guaranteeing associations for shortages or improper deliveries of goods carried under the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets. The changes are made necessary by the accession of the U.S. to the latest of those Conventions.

In acceding to the TIR Convention, countries agree that standardized procedures will be observed in administering shipments of merchandise covered by Convention terms. The TIR Convention, to which the U.S. has acceded, places limits on the nature of a guaranteeing association's liability, as well as the dollar amount of that

liability for shortages and irregularities in deliveries of merchandise. The amendments reflect these latest changes, in addition to making other clarifying points, including the fact that the period of validity for A.T.A. carnets cannot be extended.

**EFFECTIVE DATE:** November 20, 1985.

**FOR FURTHER INFORMATION CONTACT:** Arnold L. Sarasky, Office of Inspection and Control U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8648).

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

Carnets are international customs documents, backed by an internationally valid guarantee, which may be used for the entry of articles under various customs procedures such as temporary importation and transportation in bond (transit). The carnet is used in place of the usual national customs documentation and guarantees the payment of duties (including taxes) which may become due if the requirements under a particular customs procedure are not satisfied. The existence of a single international document rather than numerous national documents facilitates international commerce.

The Customs Convention on the International Transport of Goods Under Cover of TIR (International Road Transport) Carnets, 1959, TIAS 6633, represents the efforts of acceding nations to standardize their procedures regarding the movement of goods travelling under such carnets. The U.S. acceded to the 1959 TIR Convention, with the Customs procedures for administering the movement of goods under carnets being contained in Parts 18 and 114, Customs Regulations (19 CFR Parts 18 and 114). Most recently, the U.S. acceded to an updated version of the Convention done at Geneva, on November 14, 1975 (1975 TIR Convention), which agreement strictly limited the liability of guaranteeing associations (associations in the U.S. approved by the Commissioner of Customs to guarantee the payment of obligations shipped under a TIR carnet). To reflect the limits of liability of guaranteeing associations and to reference the 1975 TIR Convention, and to make clear that pursuant to Articles 4 and 5 of the A.T.A. Carnet Convention, the period of validity for A.T.A. carnets cannot be extended, it is necessary to amend Parts 18 and 114, Customs Regulations (19 CFR Parts 18, 114).

Section 18.6(d), Customs Regulations (19 CFR 18.6(d)), describes the procedure to be followed when merchandise covered by a carnet cannot be recovered intact following shortages, irregular delivery, or nondelivery of merchandise. The section now provides that the domestic guaranteeing association is liable for unspecified pecuniary penalties, liquidated damages, duties, and taxes. The

amendment reflects the changes made by the 1975 TIR Convention by eliminating reference to pecuniary penalties and by limiting the liability of a guaranteeing association for duties, taxes, and amounts collected in lieu thereof, to \$50,000 per TIR carnet. The initial bonded carrier in the U.S. will continue to be liable to Customs for all items beyond the liability of the domestic guaranteeing association. Thus, Customs will remain fully covered to protect the revenue of the U.S.

Section 18.8(e), Customs Regulations (19 CFR 18.8(e)), concerns the liability of domestic guaranteeing associations as well as the time limits for notifying such associations of shortages, irregular deliveries, and nondeliveries. The amendment eliminates all mention of guaranteeing associations' liability for anything other than duties, taxes, and amounts collected in lieu thereof, up to \$50,000 per TIR carnet, and makes other minor changes as well to accurately reflect the terms of the 1975 TIR Convention.

Section 114.1(f), Customs Regulations (19 CFR 114.1(f)), provides the definition of a TIR Carnet for the purposes of Part 114, Customs Regulations, the portion of the regulations which describes the use of all manner of carnets. The amendment removes the outdated reference to TIAS 6633, the 1959 TIR Convention number. The 1975 TIR Convention has not been assigned a TIAS number.

Section 114.2(c), Customs Regulations (19 CFR 114.2(c)), states that the regulations in Part 114 relate to carnets provided for in the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, without designating any particular Convention. The amendment adds a citation to the 1975 TIR Convention.

Section 114.23(a), Customs Regulations (19 CFR 114.23(a)), provides that no A.T.A. Carnet (temporary importation carnet) with a period of validity exceeding one year from the date of issue shall be accepted. Constant inquiries are made as to whether the period of validity can be extended. The A.T.A. Carnet Convention (Articles 4 and 5) states that the period of validity cannot be extended under any circumstances, and the amendment makes this clear as well.

Section 114.31(b), Customs Regulations (19 CFR 114.31(b)), provides that merchandise which is restricted from temporary importation under bond is likewise restricted from entry under cover of an A.T.A. or E.C.S. carnet. The U.S. has denounced the E.C.S. convention and the amendment removes the reference to that Convention from the regulations.

On January 11, 1985, Customs published a notice in the Federal Register (50 FR 1546), proposing these changes and requesting comments. No comments were received. Therefore, it has been determined to amend the regulations as proposed, without change.

# E.O. 12291 AND REGULATORY FLEXIBILITY ACT

It has been determined that the amendments are not a "major rule" within the criteria provided in § 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Pursuant to the provisions of § 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601-612), it is certified that the regulations will not have a significant economic impact on a substantial number of small entities.

## DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

## LIST OF SUBJECTS IN 19 CFR PARTS 18 AND 114

Customs duties and inspection, Imports.

## AMENDMENTS TO THE REGULATIONS

Parts 18 and 114, Customs Regulations (19 CFR Parts 18, 114), are amended as set forth below:

## PART 18—TRANSPORTATION IN-BOND AND MERCHANDISE IN-TRANSIT

1. The authority citation for Part 18 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnt. 11), 1551, 1552, 1553, 1624:

Section 18.3 also issued under 19 U.S.C. 1565;

Section 18.4 also issued under 19 U.S.C. 1322, 1623;

Section 18.7 also issued under 19 U.S.C. 1557; 1646a;

Section 18.8 also issued under 19 U.S.C. 1623;

Section 18.10 also issued under 19 U.S.C. 1557;

Sections 18.11 and 18.12 also issued under 19 U.S.C. 1484;

Section 18.13 also issued under 19 U.S.C. 1498(a);

Section 18.14 also issued under 19 U.S.C. 1498;

2. All other statutory authority cited at the end of various sections in Part 18 is removed.

3. The first sentence of § 18.6(d) is revised by removing the words "pecuniary penalties,".

4. Section 18.8(e)(1) is revised to read as follows:

**§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.**

(e)(1) The domestic guaranteeing association shall be jointly and severally liable with the initial bonded carrier for duties and taxes accruing to the U.S., and any other charges imposed, in lieu thereof, as the result of any shortage, irregular delivery, or nondelivery

at the port of destination or port of exit of merchandise covered by a TIR carnet. The liability of the domestic guaranteeing association is limited to \$50,000 per TIR carnet for duties, taxes, and sums collected in lieu thereof. Penalties imposed as liquidated damages on the initial bonded carrier, and sums assessed the guaranteeing association in lieu of duties and taxes for any shortage, irregular delivery, or nondelivery shall be computed in accordance with subparagraphs (1), (2), and (3) of paragraph (b) of this section. If a TIR carnet has not been discharged, or has been discharged subject to a reservation, the guaranteeing association shall be notified within 1 year of the date upon which the carnet is taken on charge, including time for receipt of the notification, except that if the discharge shall have been obtained improperly or fraudulently the period shall be 2 years. However, in cases which become the subject of legal proceedings during the above-mentioned period, no claim for payment shall be made more than 1 year after the date when the decision of the court becomes enforceable.

#### PART 114—CARNETS

1. The authority citation for Part 114 is revised to read as follows:

—Authority: 19 U.S.C. 66, 1202 (Gen. Hdnt. 11), 1623, 1624.

2. Section 114.1(f) is revised by removing the designation "(TIAS 6633)".

3. Section 114.2(c) is revised to read as follows:

##### § 114.2 Customs Conventions.

(c) Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, done at Geneva on November 14, 1975, as well as the 1959 TIR Convention, TIAS 6633.

4. Section 114.23(a) is revised by adding a new sentence at the end thereof to read, "This period of validity cannot be extended".

5. Section 114.31(b) is revised by removing the words, "or E.C.S.".

WILLIAM VON RAAB,  
*Commissioner of Customs.*

Approved: October 2, 1985.

DAVID D. QUEEN,

*Acting Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 21, 1985 (50 FR 42636)]

(T.D. 85-181)

**Petitioner's Desire To Contest Decision Denying Domestic Interested Party Petition Concerning Reclassification of Certain Imported Athletic Shoes**

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of petitioner's desire to contest decision on domestic interested party petition.

**SUMMARY:** This document advises the public of the desire of an interested party to contest Customs decision denying its petition requesting reclassification of certain imported athletic shoes donated to the Special Olympics. The petitioner has advised Customs of its intention to file an action in the U.S. Court of International Trade.

**DATE:** October 21, 1985.

**FOR FURTHER INFORMATION CONTACT:** Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On September 21, 1984, a notice was published in the Federal Register (49 FR 37204) indicating that Customs had received a petition from a domestic interested party filed under § 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that certain imported athletic shoes to be donated to the Special Olympics be reclassified as dutiable under the appropriate provisions of Schedule 7, Part 1, Subpart A, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202).

The shoes are structurally sound but cosmetically blemished, and are considered to be "grade B" footwear. They are currently classifiable under the provision for "regalia" in item 851.30, TSUS, and entitled to free entry pursuant to a ruling issued by Customs on June 28, 1983. Under that ruling, the shoes will be given to children who participate in Special Olympics athletic activities. They will remain the property of the Special Olympics and may be used by the participants for the duration of their involvement in Special Olympics programs. Each pair of shoes is stenciled with the Special Olympics logo.

In support of its position that imported athletic shoes are not classifiable as "regalia" under item 851.30, TSUS, the petitioner made the following arguments:

(1) Special Olympics was not established for one of the purposes enumerated in the superior heading to item 851.30, TSUS.

(2) The imported shoes are articles of "regular wearing apparel" which do not fall within the purview of the term "regalia".

(3) They are not "such insignia of rank or office, emblems, or articles as may be worn upon the person or borne in the hand during public exercises" of an eligible institution within the meaning of Headnote 2, Part 4, Schedule 8, TSUS.

(4) There is no proof that they satisfy the condition that they be worn only during public exercises of the Special Olympics; and

(5) They are not exclusively for the use of Special Olympics but are for distribution other than by way of transfer permitted by Headnote 1, Part 4, Schedule 8, TSUS.

Only one comment was received in response to the September 21, 1984, notice. The commenter endorsed classification of the imported shoes as "regalia" on the ground that Special Olympics qualifies as a nonprofit institution within the meaning of the superior heading to item 851.30, TSUS. It was also asserted that shoes having the Special Olympics logo are "regalia" because they are required in order for the children to participate in the various athletic activities of the Special Olympics.

#### DECISION ON PETITION AND NOTICE OF PETITIONER'S DESIRE TO CONTEST

After careful analysis of the comment received in response to the notice and further review of the matter, by letter dated July 15, 1985 (CLA-2 CO:R:CV:G, 076279 C), the petitioner was informed through its counsel that Customs is of the opinion that the current classification is correct, and that the petition was therefore denied.

In order for the shoes to be classified under item 851.30, TSUS; they:

- Must be imported for the use of a qualified institution;
- Must be "such insignia of rank or office, emblems, or other articles . . . ;"
- Must be worn on the person or held in the hand;
- Cannot be either regular wearing apparel or personal property of an individual;
- Must be exclusively for the use of the institution involved, and not for distribution, sale or other commercial use; and
- May only be transferred from one qualified institution to another, or exported or destroyed under Customs Supervision, without duty liability being incurred.

Customs found that these conditions had been met and denied the petition for the following reasons:

(1) Special Olympics was established for one of the purposes enumerated in the superior heading to item 851.30, TSUS. Specifically, it was established primarily to sponsor, promote and conduct athletic activities for the mentally retarded. Athletic competition for the mentally retarded constitutes an educational purpose in that participants in such activity learn self discipline, respect for one's body, the proper care of it and the necessity of teamwork to accom-

plish goals. See *Commissioners of District of Columbia v. Shannon & Luchs Const. Co., Inc.*, 17 F. 2d 219 (1927).

(2) The shoes are not "articles of regular wearing apparel" within the purview of item 851.30, TSUS, because the Special Olympics logo stenciled thereon causes them to be uniquely designed apparel imported by a qualified institution for use in its public exercises.

(3) The shoes are "articles as may be worn upon the person \* \* \* during public exercises" of an eligible institution within the meaning of Headnote 2, Part 4, Schedule 8, TSUS.

(4) For an article of wearing apparel to be considered "regalia" for tariff purposes it must be in the nature of a special costume or uniform which is not worn as regular wearing apparel and which is required to be and is only worn as a symbol during public exercise of an eligible institution. The participants in Special Olympics wear casual dress in addition to the athletic shoes. In context with Special Olympics activities, the participants are wearing a special uniform due to the nature of the activity and the fact that they are wearing shoes with the Special Olympics logo stenciled thereon.

(5) Although there has been no "proof" submitted that the shoes are worn only during the public exercises of the Special Olympics, we have not been informed that they are being used as regular shoes outside of the Special Olympics program.

(6) The written agreement between Special Olympics and the donor has been amended to reflect that the donated footwear:

- Shall be given to and used by handicapped persons who are participants in Special Olympics; and
- Shall remain the property of Special Olympics and can be used by the participants only so long as they remain participants in the Special Olympics Programs.

In response to Customs decision to deny the petition, on August 13, 1985, the petitioner filed notice of its desire to contest the decision in accordance with § 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.23, Customs Regulations (19 CFR 175.23).

Customs has reconsidered the matter in light of the petitioners' letter, but remains of the opinion that its July 15, 1985 decision is correct. That decision will stand in the absence of a contrary judgment rendered by the U.S. Court of International Trade or the U.S. Court of Appeals for the Federal Circuit.

#### AUTHORITY

This notice is published under the authority of § 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.24, Customs Regulations (19 CFR § 175.24).

## DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Regulations Control Branch, office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: October 16, 1985.

WILLIAM VON RAAB,  
*Commissioner of Customs.*

[Published in the Federal Register, October 21, 1985 (50 FR 42635)]

## 19 CFR Part 134

(T.D. 85-158)

## Country of Origin Marking of Pistachio Nuts

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of delayed effective date.

SUMMARY: Customs previously ruled that imported pistachio nuts which are processed by roasting, need not subsequently be marked as products of the foreign country where grown, but become a product of the country where the roasting is performed. A request was received to rescind these rulings because the roasting process does not substantially transform pistachio nuts which have otherwise attained the character in which they will be sold to consumers prior to importation. Specifically, it was called to Customs attention that pistachio nuts which are grown in Iran are then roasted elsewhere than in Iran. These roasted pistachio nuts are then sold without any indication that the nuts are products of Iran, and under brand names which imply that they are products of California. Customs decided that the roasting; roasting and salting; or roasting, salting, and coloring; of pistachio nuts, without more, does not result in a substantial transformation. Accordingly, by T.D. 85-158, published in the Federal Register on September 18, 1985 (50 FR 37842), the 2 previous rulings were rescinded and the containers of such products must be marked to indicate the country of origin of the raw products. This change was to have taken effect on October 18, 1985.

However, Customs has received requests to delay the effective date of T.D. 85-158. Because the requests have merit, Customs has decided to grant 2 additional months to allow all affected parties to comply with the requirements of T.D. 85-158. Accordingly, the effective date is changed from October 18, 1985, to December 18, 1985. All pistachio nuts entered for consumption or withdrawn from warehouse on or after this date are subject to the ruling. The certification requirements of 19 CFR 134.25 will apply only to such

pistachio nuts. The ruling will not affect those pistachio nuts which are entered for consumption or withdrawn from warehouse before October 18, 1985, but sold at retail after this date. Only those retail packages which contain pistachio nuts imported on or after the effective date must be marked with the country of origin.

In order to facilitate compliance with the ruling, as an interim measure, the use of adhesive labels applied to cans and packages already in stock or manufactured and printed prior to September 18, 1985 (date of publication of the ruling) may be accepted.

**EFFECTIVE DATE:** December 18, 1985.

**FOR FURTHER INFORMATION CONTACT:** Lorrie R. Rodbart, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

**Dated:** October 15, 1985.

**JOHN P. SIMPSON,**  
*Director,*  
*Office of Regulations and Rulings.*

[Published in the Federal Register, October 22, 1985 (50 FR 42683)]

# U.S. Customs Service

## *General Notice*

19 CFR Part 114

Notice Regarding Applications for TIR Carnet Issuing and  
Guaranteeing Association

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** This notice advises the public that the Equipment Interchange Association (E.I.A.) has withdrawn as the U.S. issuing and guaranteeing association for TIR Carnets. Further, the document informs the public that Customs is accepting applications from those organizations interested in replacing the E.I.A.

TIR carnets function as the sole document necessary for the entry of road vehicles, containers, and bonded merchandise across international borders. Each of the nations agreeing to use carnets approve an organization to issue them and to guarantee the payment of obligations which may be associated with their use. The E.I.A., which had been the approved U.S. association for these purposes, has withdrawn voluntarily. Therefore, it is necessary to solicit applications from prospective replacement organizations.

**EFFECTIVE DATE:** Applications must be received by November 20, 1985.

**ADDRESS:** Written applications should be addressed to Assistant Commissioner, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Arnold L. Sarasky, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8648).

**SUPPLEMENTARY INFORMATION:**

### **BACKGROUND**

This notice informs the public that the Equipment Interchange Association (E.I.A.) has voluntarily withdrawn from its position as the U.S. issuing and guaranteeing association for TIR (Internation-

al Road Transport) carnets. This notification is made pursuant to § 114.12, Customs Regulations (19 CFR 114.12). The notice also advises the public that Customs is accepting applications from qualified organizations who may wish to be approved as the new U.S. issuing and guaranteeing association.

Carnets are international customs documents, backed by an internationally valid guarantee, which may be used for the transportation of merchandise in bond. The carnet is used in place of the usual national customs documentation and guarantees the payment of duties (including taxes) which may become due if the requirements under a particular customs procedure are not satisfied. The existence of a single international document rather than numerous national documents facilitates international commerce.

TIR carnets are a specialized form of carnet which authorize road vehicles, containers, and their contents to transit one or more frontiers without customs inspection at intermediate points and with a minimum of other formalities. Road vehicles and containers transit the country or move from port of entry to final destination with their contents under customs seal. Inspection is accomplished at the final destination. TIR carnets are valid until the end of the transit operation.

The U.S. is a contracting party (trading nation) under the 1975 Customs Convention on the International Transportation of Goods Under Cover of TIR Carnets which replaced the TIR Convention, 1959. The U.S. was also a contracting party to the 1959 Convention. Under this agreement, the U.S., through Customs, approves an organization in the U.S. to issue and guarantee the payment of obligations arising under carnets. The carnet guarantee is based on international chains of national guaranteeing associations established in the countries accepting the carnets. The guaranteeing association is jointly and severally liable with the carnet holder for the payment of the sums due in the event of non-compliance with the conditions of the procedures for which the carnet is used.

On February 11, 1969, a notice was published in the Federal Register (34 FR 1970) which invited applications from organizations willing to undertake the obligations of U.S. issuing and guaranteeing association. By T.D. 71-93, published in the Federal Register on April 2, 1971 (36 FR 6119), the public was notified that E.I.A. had been approved to fulfill those responsibilities. On January 22, 1985, Customs received written notification that E.I.A. intended to withdraw from its position. In accordance with § 114.12(b), Customs Regulations (19 CFR 114.12(b)), withdrawal becomes effective not less than 6 months following written notification that the approved guaranteeing association will not guarantee the payment of obligations under carnets accepted after the specified date. Accordingly, on July 22, 1985, E.I.A. ceased to be the U.S. issuing and guaranteeing association.

## SOLICITATION FOR APPLICATIONS

Due to the withdrawal of the E.I.A. as the U.S. issuing and guaranteeing association, it has become necessary for Customs to solicit applications for a replacement organization.

Pursuant to § 114.11, Customs Regulations (19 CFR 114.11), an association, in order to be approved by Customs, must provide in writing that it will undertake to perform the functions and fulfill the obligations specified in the 1975 Customs Convention on the International Transportation of Goods Under Cover of TIR Carnets. The text of the TIR Convention is filed with this document in the Office of the Federal Register. Copies of the TIR Convention may also be obtained by contacting the individual identified in the "For Further Information Contact" provision of this document.

To be considered, applications must be received not later than November 20, 1985. Applications should be sent to the address listed under the heading "ADDRESS", which appears near the beginning of this document.

WILLIAM VON RAAB,  
*Commissioner of Customs.*

Approved: October 4, 1985.

DAVID D. QUEEN,  
*Acting Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 21, 1985 (50 FR 42516)]

THE  
JOURNAL  
OF  
THE  
AMERICAN  
MEDICAL  
ASSOCIATION  
PUBLISHED WEEKLY  
CHICAGO, ILL.  
1917

# U.S. Customs Service

## *Proposed Rulemakings*

### 19 CFR Part 101

#### Proposed Customs Regulations Amendment Relating to the Customs Field Organization

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Customs Regulations by establishing a new Customs port of entry, on a 2-year trial basis, to be known as Davenport-Rock Island-Moline, in the Chicago, Illinois, Customs district. The change is being proposed as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

**DATE:** Comments must be received on or before December 16, 1985.

**ADDRESS:** Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

The Quad-City Development Group filed an application with Customs requesting the establishment of a new Customs port of entry at Davenport, Iowa, and Rock Island and Moline, Illinois. A review of that application has confirmed that the proposed port meets the minimum Customs criteria for establishing ports of entry.

Customs ports of entry are places (seaports, airports, or land border ports) designated by the Secretary of the Treasury where Customs officers or employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the vari-

ous provisions of Customs and related laws. Staffing at ports of entry may range from one to several hundred employees, depending on the volume of business. However, most new ports of entry are staffed by at least a port director, one or more inspectors, and a secretary.

The Secretary of the Treasury is advised by the Commissioner of Customs in matters affecting the establishment, abolishment, or other change in ports of entry. Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449).

The limits of the proposed port of entry of Davenport-Rock Island-Moline are as follows: In Rock Island County, Illinois, the Townships of Andalusia, Blackhawk, Rock Island, South Rock Island, Moline, South Moline, Coal Valley, Hampton, Zuma, and Coe; in Henry County, Illinois, the Townships of Colona, Hanna, and Edford; and in Scott County, Iowa, the Townships of Buffalo, Blue Grass, Hickory Grove, Sheridan, Lincoln, LeClaire, Pleasant Valley, Bettendorf, and that area of the City of Davenport enclosed within the present limits of these townships.

The basis upon which Customs is recommending establishing a port of entry at Davenport-Rock Island-Moline, on a 2-year trial basis, is the proposed port's commitment to handle a sufficient amount of imported merchandise to meet minimum port of entry workload standards. These standards, published as a General Notice in the Federal Register on March 9, 1982 (47 FR 10137), list 2,500 consumption entries per year as the minimum, potential Customs workload for establishment of a port of entry. The proposed port area is committing to 3738 consumption entries per year, approximately 150% of the 2,500 minimum required.

Customs is not certain at this time if the major importers in the proposed port area will choose to incur the extra expense of importing their merchandise by in-bond shipments to the proposed port area, rather than to continue the simpler and less expensive clearance of the merchandise at the first port of arrival at the U.S.-Canadian border or elsewhere. However, the recommended 2-year trial period for the proposed port should provide sufficient time for the port to establish itself and attract business. At the end of the 2-year period, the practicality of maintaining a port of entry at Davenport-Rock Island-Moline will be reevaluated in light of the actual Customs workload.

#### COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs.

toms. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

#### EXECUTIVE ORDER 12291

Because this proposal relates to the organization of Customs it is not a regulation or rule subject to E.O. 12291.

#### REGULATORY FLEXIBILITY ACT

It is certified that the provisions of the Regulatory Flexibility Act ("Act") relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are not applicable to this proposal because it will not have a significant economic impact on a substantial number of small entities.

Customs routinely establishes and expands Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although the proposal may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing and expanding port limits at Customs ports of entry in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

#### LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

#### PART 101—GENERAL PROVISIONS

##### PROPOSED AMENDMENT TO THE REGULATIONS

If the proposed change is adopted, the list of Customs regions, districts, and ports of entry in § 101.3, Customs Regulations (19 CFR 101.3), will be amended accordingly.

#### AUTHORITY

This amendment is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR

1949-1953 Comp. Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449).

#### DRAFTING INFORMATION

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,  
*Commissioner of Customs.*

Approved: October 2, 1985.

DAVID D. QUEEN,

*Acting Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 17, 1985 (50 FR 42035)]

---

#### 19 CFR Part 101

#### Proposed Customs Regulations Amendment Relating to the Customs Field Organization—Roberts Landing, Michigan

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking; proposed closing of Customs station.

SUMMARY: This document proposes to close the Roberts Landing, Michigan, Customs station. Given the small volume of traffic crossing the Canadian-U.S. Border at this point, and its proximity to other Customs stations, we believe the closure is warranted and in the public interest. This proposed change would enable Customs and the Immigration and Naturalization Service to obtain more efficient use of its personnel, facilities, and resources, as well as realize a substantial annual savings.

DATE: Comments must be received on or before December 16, 1985.

ADDRESS: Comments (preferably in triplicate) should be addressed to and inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229

FOR FURTHER INFORMATION CONTACT: Bernie Harris, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

Customs ports of entry and stations are locations where Customs officers are placed for the purpose of accepting the entry of merchandise, collecting duties, examining baggage, clearing passengers, and enforcing the various provisions of the customs laws and other laws.

The significant difference between ports of entry and stations is that at stations, the Federal Government is reimbursed for:

(1) The salaries and expenses of its officers or employees for services rendered in connection with the entry or clearance of vessels; and

(2) Except as otherwise provided by the Customs Regulations, the expenses (including any per diem allowed in lieu of subsistence), but not the salaries of its officers or employees, for service rendered in connection with the entry or delivery of merchandise.

As part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to importers, carriers, and the public, it is proposed to amend § 101.4(c) Customs Regulations (19 CFR 101.4(c)), by deleting Roberts Landing, Michigan, from the list of designated Customs stations.

The Roberts Landing Customs station, located in the Detroit, Michigan, Customs district is one of three auto ferry stations on the St. Clair River between the Customs ports of Port Huron and Detroit. Roberts Landing is a river crossing only; there is no town or village on the U.S. side of the river. Customs has determined that it is not cost-effective to maintain this station in view of the following factors: Its traffic is almost exclusively non-commercial; the ferry boat at the landing is too small for any vehicle larger than a medium size camper; the station is closed each year for a period of from 2 weeks to 4 months due to various reasons (vessel repairs, weather, river ice, etc.); the close proximity of the other two ferry stations on the St. Clair River (Algonac, which is 3 miles south, and Marine City, which is 5 miles north) would cause little inconvenience to diverted traffic and these two stations could easily handle any overflow without incurring any increase in their operating costs. Roberts Landing is currently staffed by 1 permanent, full-time Customs inspector. The Immigration and Naturalization Service has decided not to fill their vacant Inspector position located there. Closing Roberts Landing would enable Customs to realize a savings of over \$100,000 annually.

If the proposed change is adopted, the list of Customs districts, stations, and ports of entry having supervision in § 101.4(c) will be amended accordingly.

#### COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

#### AUTHORITY

This amendment is proposed pursuant to 5 U.S.C. 301, 19 U.S.C. 1, 66, 1202 (Gen. Hdnote 11), 1624, Reorganization Plan 1 of 1965.

#### LISTS OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Imports, Organization.

#### EXECUTIVE ORDER 12291

Because the proposed amendment relates to the organization of Customs, it is not a regulation or rule subject to E.O. 12291, pursuant to § 1(a)(3) of that E.O.

#### REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of § 3 of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, *et seq.*), it is hereby certified that, if promulgated, the proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, this proposal is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

ALFRED R. DE ANGELUS,  
*Commissioner of Customs.*

Approved: October 2, 1985.

DAVID D. QUEEN,

*Acting Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 17, 1985 (50 FR 42036)]

---

### 19 CFR Part 143

#### Proposed Customs Regulations Amendments Relating to Special Procedures for Clearance of Cargo Carried by Courier or Express Air Delivery Services

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Customs is considering amending its regulations relating to the informal entry and clearance of merchandise transported by courier and overnight express air delivery services. The proposed amendments would, for the first time, specifically make the informal entry procedures available to these delivery services, and, with the exception of restricted and prohibited merchandise, and merchandise subject to quota or quantitative restraints, would apply to merchandise not exceeding \$1,000 in value. Customs proposes to provide expedited clearance procedures in recognition of the special needs of the growing courier and express delivery industry. Customs believes that the proposed amendments will promote uniform, fair, and consistent treatment of the various delivery services, while at the same time ensuring the protection of the revenue in accord with all applicable laws and regulations.

DATE: Comments must be received on or before December 20, 1985.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: Jerrold O. Worley, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8151).

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

All imported merchandise entering the customs territory of the U.S. is subject to procedures relating to entry and clearance. The procedures ensure the proper appraisement, valuation, and tariff classification of the merchandise for the purpose of collecting the lawful amount of duties, as well as compliance with all other laws and regulations administered and enforced by the Customs Service.

Different procedures are provided for the entry and clearance of merchandise depending upon its value. There are formal entry procedures set forth in Part 141, Customs Regulations (19 CFR Part 141), with certain exceptions applicable to shipments valued in excess of \$1,000, and informal entry procedures set forth in Part 143, Customs Regulations (19 CFR Part 143), for the most part limited to shipments valued at \$1,000 or less.

Although the procedures for the informal entry of merchandise are less cumbersome and comprehensive than those for formal entry, they may still present an impediment to courier and express delivery services seeking to fulfill overnight delivery obligations.

The most recent development in the express delivery industry is the planned rapid expansion of delivery services from foreign locations to the U.S. These services fly into various hub cities in the midwest U.S. at which Customs has limited manpower, and at non-traditional business hours (generally between 10:00 p.m. and 3:00 a.m.). The interplay of these factors (the necessity for expeditious clearance of merchandise, and the limited Customs service available at the hub locales at off-peak time periods) necessitates the institution of special procedures applicable only to this industry.

The companies concerned are able to provide Customs with certain useful advance information on incoming international shipments. However, other information necessary for the normal entry process is not always available in advance of arrival, such as the importer number and tariff classification item number from the Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202).

In light of the special needs of the industry and the inability to have access to complete advance information, Customs is proposing to amend Part 143, Customs Regulations (19 CFR Part 143), by setting forth new procedures to apply to these types of delivery services. Specifically, § 143.21 would be amended to state that cargo transported by courier and overnight express air delivery services may use the informal entry procedures. Additionally, a new § 143.29 would set forth the exact procedures applicable to these carriers. The proposed amendment provides that for shipments valued at \$250 or less, an invoice or advance manifest must be presented which contains necessary information such as the shipper's address, name and address of the consignee, value and country of origin of the merchandise, and a description of the merchandise, prior to arrival of a shipment. Submission of this information would be permitted as an accommodation to the carriers, and would be submitted in lieu of the normal entry documents (Customs Form 3461, Application for Special Permit for Immediate Delivery; Customs Form 5119, Informal Entry). The proposal would require that for shipments valued over \$250 but less than \$1,000, the previous information be supplemented by the addition of the appropriate TSUS item number for tariff classification purposes.

Section 321, Tariff Act of 1930, as amended (19 U.S.C. 1321), provides that in order to avoid expense and inconvenience to the Government which is disproportionate to the amount of revenue that would be collected, the Secretary of the Treasury is authorized to promulgate regulations to waive import duties on shipments valued at \$5.00 or less in the country of shipment. Accordingly, § 10.151, Customs Regulations (19 CFR 10.151), provides for the waiver of duty on such shipments, unless the district director has reason to believe that the shipment is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry, or of avoiding compliance with any pertinent law or regulation. To expedite the entry and clearance of shipments valued at \$5.00 or less, under the proposal the carrier would be required to segregate those shipments from others on the advance manifest, if the manifest is to be used as the entry document. The carrier would also be required to present a properly executed Entry Summary (Customs Form 7501) within 10 days of filing an entry, with estimated duties attached. Finally, the proposal provides that Customs will accept an annual blanket Customs Form 3461, in which the importer of record assumes all liability for shipments released under the new expedited procedures. The blanket form would be required each year before a courier or delivery service could commence operations utilizing the new procedures.

#### COMMENTS

Before adopting this proposal, consideration will be given to any written comments likely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 553), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

#### EXECUTIVE ORDER 12291

The proposed amendments do not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

#### REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of § 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, this regulation is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

### DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

### LIST OF SUBJECTS IN 19 CFR PART 143

Customs duties and inspection, Imports.

### PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend Part 143, Customs Regulations (19 CFR Part 143), as set forth below:

### PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. The authority citation for Part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

2. It is proposed to amend § 143.21 by adding, at the end thereof, a new paragraph (1) to read as follows:

#### § 143.21 Merchandise eligible for informal entry.

(1) Cargo transported by courier and overnight air express delivery services, with the exception of prohibited and restricted merchandise, and merchandise subject to quota or quantitative restraints (see § 143.29 of this Part).

3. It is proposed to amend Part 143 by adding a new § 143.29, to read as follows:

#### § 143.29 Special informal entry procedures for cargo transported by courier and overnight express air delivery services.

This procedure is available for accompanied or air express shipments not exceeding \$1,000 in value imported by courier and overnight delivery services, with the exception of prohibited and restricted merchandise, and merchandise subject to quota or quantitative restraints.

(a) *Shipments valued at \$250 or less.* To obtain expedited clearance under this section, the carrier shall submit a copy of the invoice or advance manifest containing necessary information including name and address of the shipper, name and address of the consignee, value of the merchandise, country of origin of the merchandise, and description of the merchandise. The completed invoice or advance manifest will be accepted by Customs in lieu of a Customs Form 3461 (Application for Special Permit for Immediate Delivery), or Customs Form 5119 (Informal Entry), as the entry control document.

(b) *Shipments valued in excess of \$250 and not exceeding \$1,000.* In addition to the information required on the documentation specified in paragraph (a) of this section, the appropriate item number from the Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), must be supplied for classification purposes.

(c) If an advance manifest is used as the entry document, shipments valued in excess of \$5.00 must be segregated from those valued at \$5.00 or less.

(d) Within 10 days of the filing of the entry, the Entry Summary (Customs Form 7501) must be presented, in proper form, with estimated duties attached.

(e) A Customs Form 3461 (Application for Special Permit for Immediate Delivery), appropriately modified to cover all importations under the special procedures provided in this section for a period of 1-year, shall be submitted to the district director before the procedure shall be commenced by the courier or overnight air express delivery service.

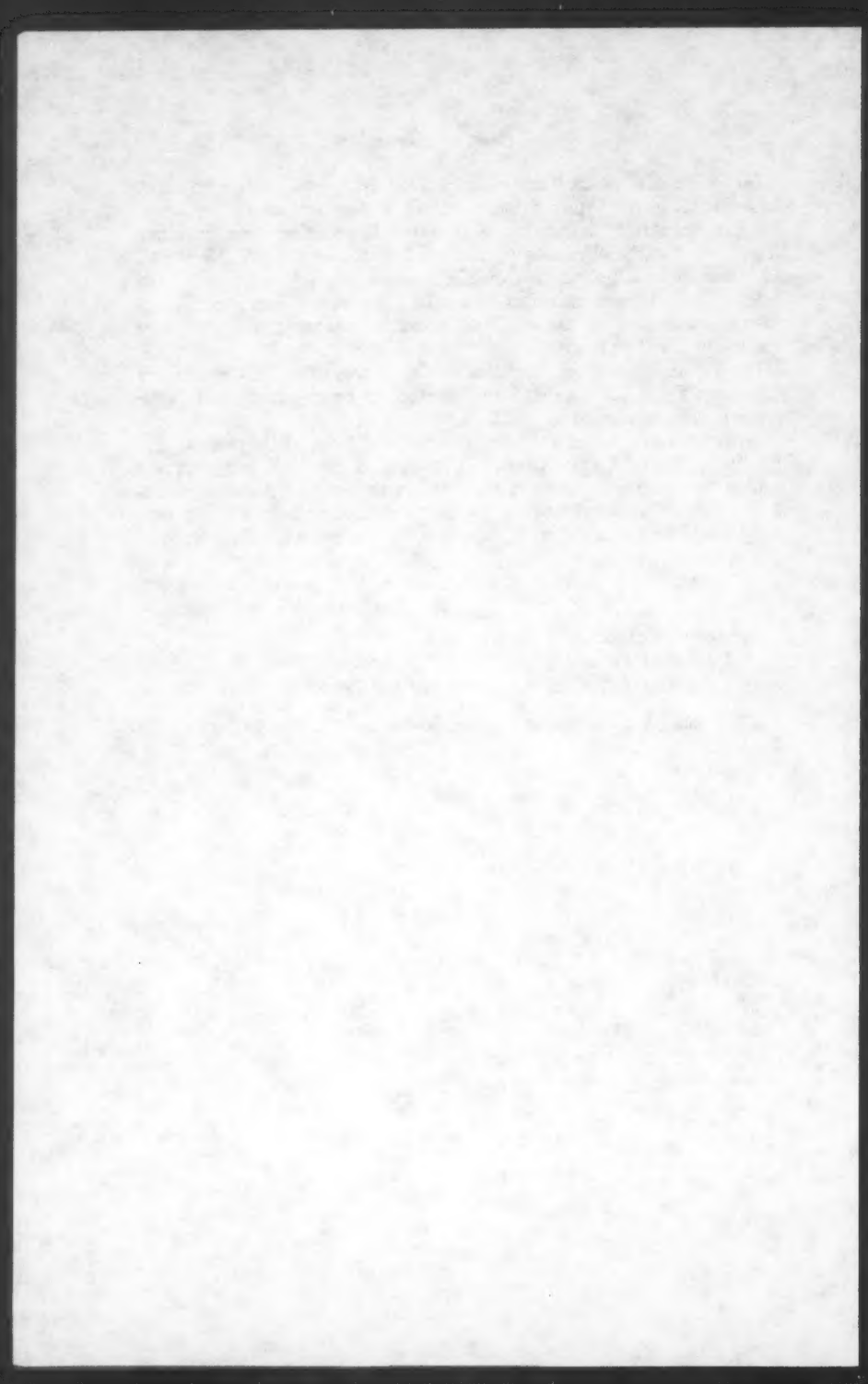
ALFRED R. DE ANGELUS,  
*Acting Commissioner of Customs.*

Approved: October 9, 1985.

DAVID D. QUEEN,

*Acting Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 21, 1985 (50 FR 42569)]



# U.S. Court of Appeals for the Federal Circuit

(Appeal No. 85-1277)

**MERCK & Co., INC., PETITIONER v. U.S. INTERNATIONAL TRADE  
COMMISSION, ET AL., RESPONDENTS**

*James B. Kobak, Jr.*, Hughes, Hubbard & Reed, of New York, New York, argued for petitioner. With him on the brief were *Robert J. Sisk*, *Theodore V.H. Mayer*, *William M. Thomas, Jr.* and *Ruth L. Piekarska*.

*Robert L. Banse* and *Mario A. Monaco*, Merck & Co., Inc., of Rahway, New Jersey, of counsel.

*Marcia H. Sundeen*, Office of the General Counsel, International Trade Commission, of Washington, D.C., argued for respondent ITC. With him on the brief were *Lyn M. Schlitt*, General Counsel and *Michael P. Mabile*, Assistant General Counsel.

*Peter W. Gowdy*, Cushman, Darby & Cushman, of Washington, D.C., argued for respondent Mylan Pharmaceuticals. With him on the brief were *Carl G. Love*, *James T. Hosner* and *Kendrew H. Colton*.

*Andrew G. Fusco*, of Morgantown, West Virginia, of counsel.

*Irving Wiesen*, Bass & Ullman, of New York, New York, argued for respondent Par Pharmaceuticals. With him on the brief was *Steven R. Trost*.

*Alfred B. Engelberg*, Amster, Rothstein & Engelberg, of New York, New York, argued for respondents Zenith & ACIC.

*Seymour B. Jeffries*, of Woodmere, New York, was on the brief for respondent Gyma Laboratories of America, Inc.

*Robert V. Marrow*, Salon, Marrow, Dyckman & Trager, of New York, New York, counsel for respondent Chelsea Labs, Inc., et al.

*Jerome H. Tick*, Krieger & Tick, of New York, New York, counsel for respondent S.S.T.

*Frances B. Bernstein*, Pavia & Harcourt, of New York, New York, counsel for respondent Fabbrica Italiana.

*Delia Doyle Rose*, Haas, Boehm, Brown, Rigdon, Seacrest and Fisher, P.C., of Daytona Beach, Florida, counsel for respondent Ellis Pharm. I.

*T. Mitchell Willey*, Oppenheimer, Wolff, Foster, Shepard & Donnelly, of Washington, D.C., counsel for respondent, Industrie Chimiche Farmaceutiche Italiane, SPA.

*David A. Gantz*, Oppenheimer, Wolff, Foster, Shepard & Donnelly, of Washington, D.C., of counsel.

Appealed from: International Trade Commission.

(Appeal No. 85-1277)

**MERCK & Co., INC., PETITIONER v. U.S. INTERNATIONAL TRADE  
COMMISSION, ET AL., RESPONDENTS**

(Decided October 9, 1985)

Before FRIEDMAN, DAVIS, and NIES, *Circuit Judges*.

FRIEDMAN, *Circuit Judge*.

This is a petition by Merck & Co., Inc. (Merck), for review of a determination of the United States International Trade Commission (Commission) summarily terminating an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337 (1982). The investigation involved the importation into the United States of a product manufactured abroad by a process that allegedly violated Merck's patent covering the process. We reverse the Commission's determination and remand the case to the agency for further proceedings.

I

A. This case involves U.S. Patent No. 3,629,284 ('284 patent), which is directed to a method of producing Indomethacin, a pharmaceutical compound useful in the therapy of inflammatory diseases. The application that matured into the '284 patent, Serial No. 838,037 ('037 application), originally was assigned to Sumitomo Chemical Company, Limited (Sumitomo), a Japanese company. Sumitomo also had four other pending patent applications claiming related subject matter. The examiner agreed to allow the '037 application in view of Sumitomo's expressed intent "to insure the issuance of the patents [resulting from all five applications] on the same day" "so as to avoid any question of extension of monopoly as by double patenting \* \* \*."

After the Patent and Trademark Office sent a Notice of Allowance of the '037 application to Sumitomo, Sumitomo filed a terminal disclaimer which, in addition to disclaiming the portions of the terms of any of the five patents covering the period subsequent to the earliest expiration date of any of them, also stated:

[I]t is agreed (pursuant to the Commission's notice appearing at 860 O.G. 661-2) that the patent issuing on [this] application \* \* \* shall expire immediately if it ceases to be commonly owned with the patents issuing on applications serial nos. 605,171, 695,332, 635,362, and 605,154 [the four other patents].

The '284 patent was issued to Sumitomo on December 21, 1971. The four other patents also were issued to Sumitomo.

In 1967, Merck had obtained from Sumitomo a nonexclusive license under the patent application that preceded the '037 application. Merck has been the sole licensee under the '284 patent.

B. On July 21, 1983, Merck filed a complaint with the Commission seeking to bar the importation of Indomethacin allegedly made according to the method claimed in the '284 patent. The Commission initially rejected the complaint on the ground that Merck, as a nonexclusive licensee, did not have standing to file the complaint.

On December 27, 1983, Merck entered into an agreement with Sumitomo in which Sumitomo assigned to Merck for \$50,000 its "entire right, title, and interest, in and to" the '284 and one other patent (which did not result from any of the four applications referred to in the terminal disclaimer).

On January 17, 1984, Merck filed with the Commission a new complaint, which reiterated the charges in its prior complaint. The complaint also stated that the patents of which Merck had been the licensee, including the '284 patent, had been "assigned by Sumitomo to MERCK" in 1983. In response to this complaint, the Commission initiated an investigation.

On August 30, 1984, Mylan Pharmaceuticals, Inc. (Mylan), one of the respondents in the complaint proceeding, moved for a summary determination terminating the investigation. It argued that the December 27, 1983 assignment covered only the '284 patent and not the other four related patents, and that the '284 patent therefore had expired under the terminal disclaimer.

On September 4, 1984, Sumitomo assigned to Merck, effective December 27, 1983, and without any additional consideration, "the entire right, title and interest, in and to" the four other patents.

On September 11, 1984, the administrative law judge granted Mylan's motion and issued an initial determination terminating the investigation. She found that there were "no genuine issues of material fact in issue for the purposes of [the] motion \* \* \*." She ruled that under the terminal disclaimer, the '284 patent expired when it was assigned to Merck on December 27, 1983 without the assignment of the four other patents; and that the September 4, 1984 retroactive assignment of the four patents could not revive the expired '284 patent. She accordingly concluded that following the December 27, 1983 assignment, there no longer existed any rights in the '284 patent upon which Merck could base a complaint.

The Commission declined to review the initial determination of the administrative law judge terminating the investigation, which thereby became final.

## II

We agree with the administrative law judge that the '284 patent expired on December 27, 1983, unless the four related patents were also transferred to Merck by that assignment. Further, we agree that if the '284 patent expired, it could not be revived or reactivated by later assignments.

A. 1. If only the language of the assignment agreement itself were considered, there is no immediately apparent basis for rejecting the administrative law judge's decision. On its face, the December 27, 1983 assignment covered only the '284 patent and did not explicitly convey any interest in any of the four other patents referred to in the terminal disclaimer. The relevant portion of the December 27 assignment states that Sumitomo

Hereby assigns and transfers to MERCK & CO., INC. \* \* \* the entire right, title and interest, in and to the United States Letters Patent Number [ ] 3,629,284 \* \* \* and all the rights and privileges under said Letters Patent [ ] and reissues thereof for fifty thousand United States Dollars\* \* \*.

SUMITOMO undertakes that, when required, it will sign all papers and take all rightful oaths for vesting title thereto in MERCK \* \* \*.

SUMITOMO hereby confirms that the rights and property herein conveyed are, to the best of SUMITOMO's knowledge and belief, free and clear of any incumbrance and that SUMITOMO has the full right to convey the same as herein expressed.

There is nothing in this language to indicate that Sumitomo thereby assigned to Merck the four other patents as well. In terms it covers only Sumitomo's "entire right, title and interest in and to the United States Letters Patent Number [ ] 3,629,284 \* \* \* and all the rights and privileges under said Letters Patent [ ] \* \* \*." Moreover, since the assignment additionally and explicitly conveyed another of Sumitomo's patents which is not involved in this case, it would seem that if the parties had intended the December 27 assignment to cover the four other patents, they would have so stated. Indeed, Merck admitted in its brief before us that it was unaware of the common ownership provision of the terminal disclaimer during its 1983 negotiations with Sumitomo.

Under this analysis, the effect of the December 27 assignment was that the '284 patent "cease[d] to be commonly owned" with the four other patents and the '284 patent "expire[d] immediately." If the '284 patent thus expired, it could not be revived or recreated by a retroactive assignment of the other four patents.

2. The provision in the terminal disclaimer that the '284 patent would "expire immediately" if it ceased to be commonly owned with the other four patents conformed to the requirements of the Patent and Trademark Office that were in effect when the disclaimer was filed. Commissioner's Notice, 848 O.G. 1 (Feb. 14, 1968). See generally *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982). An amendment to 37 C.F.R. § 1.321 (1971), effective April 30, 1971, changed this requirement to provide that disclaimers need state only that the patent be unenforceable during the period it is not commonly owned with the other patents recited in the disclaimer. This amendment was publicly proposed at 35 Fed. Reg.

20,012 (1970) and published at Fed. Reg. 7312 (1971), both before the date on which the '284 patent issued. Sumitomo, however, never attempted to have the language of its disclaimer changed to incorporate this new and less severe standard.

Merck contends that since Sumitomo had received a notice of allowance of the '037 application (which matured into the '284 patent) before and not after Sumitomo filed the terminal disclaimer, Sumitomo could have obtained the patent without such filing. From this it concludes that the terminal disclaimer should not be given effect.

The record is clear, however, that the examiner agreed to allow all of the applications, including the '037 application, only because Sumitomo had indicated that it would file a terminal disclaimer. The common ownership provision of the terminal disclaimer that Sumitomo filed conformed with the Commissioner's the existing requirements. We decline here, as we did in *Kinzenbaw v. Deere & Co.*, 741 F.2d 383, 389, 222 USPQ 929, 933 (Fed. Cir. 1984), *cert. denied*, 105 S. Ct. 1357 (1985), to undertake the speculative inquiry whether, if Sumitomo had not filed the terminal disclaimer containing the common ownership provision, the '284 patent would have issued and what its scope would have been.

B. Before both the Commission and this court, Merck argued that the intent of the parties to the December 27, 1983 assignment was to convey to Merck valid ownership of Sumitomo's interest in the '284 patent; that if accomplishing that objective required an assignment of the four other patents as well, the parties necessarily intended the assignment to have that effect; that it thereby acquired equitable ownership of the four other patents; that equitable ownership is sufficient to maintain "common ownership" under the disclaimer; and that the *nunc pro tunc* assignment confirms the parties' original intent and action. Merck opposed Mylan's motion for summary termination of the investigation on the ground that there were disputed issues of material fact relating to the intent of the parties that required a hearing. In other words, Merck sought to prove that the *nunc pro tunc* provision in the formal assignment of the four patents merely implemented the original understanding and intent of the parties when Merck acquired the '284 patent from Sumitomo.

In holding that "[t]here are no genuine issues of material fact in issue for the purposes of this [Mylan's] motion," the administrative law judge held that "[t]he intent of Sumitomo \* \* \* is not material \* \* \*". The Patent Office granted the '284 patent in reliance on the patentee's representation that the patent would expire on a given condition. Merck is estopped from contending that because the occurrence of the condition was unintentional, the patent should not expire."

This conclusion, however, assumes the very fact that Merck disputes and upon which it seeks to introduce evidence, namely, that

the December 1983 assignment covered only the '284 patent and not the four others. Merck's position is that the parties to that assignment intended to and did assign the four other patents because only the broader assignment would have transferred the '284 patent in viable and meaningful form.

The record contains facts which, if explored and developed, might lead the Commission to accept Merck's position.

1. The December 1983 assignment was made shortly after the Commission had rejected Merck's initial complaint because, as a nonexclusive licensee, Merck lacked standing to file it. Merck obtained the assignment for the obvious purpose of giving it standing to file its complaint with the Commission. Indeed, it filed its new complaint only 20 days after the assignment. Merck paid Sumitomo \$50,000 for the assignment of the '284 (and another) patent. Merck stresses that it would not have paid \$50,000 to acquire a patent for use in filing a complaint with the Commission if that patent would not have enabled it to take that action.

We do not know whether Merck told Sumitomo the reason it needed to acquire the patent. If it did, Sumitomo must have been aware that for the '284 patent to accomplish Merck's purpose, Merck had to acquire valid ownership of the patent. If the interest in the patent that Sumitomo sold to Merck ceased to exist upon transfer of the patent, that result would have thwarted the very purpose for which Merck acquired the patent and for which it paid Sumitomo \$50,000.

Merck argues that in these circumstances the equities strongly favor it. Merck, however, ignores an important fact that cuts against it. The terminal disclaimer itself, to which the patent referred, was part of the public prosecution file of the patent. If Merck had examined that file before acquiring the patent, it would have seen the common ownership provision and could have insisted that the assignment explicitly and specifically cover the four other patents.

2. Five days after Mylan on August 30, 1984 filed its motion to terminate the investigation, Sumitomo assigned the four other patents to Merck. Sumitomo did so without additional payment and made the assignment retroactive to the December 1983 assignment. This action suggests a recognition by Sumitomo that the original assignment covered the four other patents, i.e., that what the parties intended the December 1983 assignment to accomplish was to give Merck whatever interest it needed to prosecute before the Commission a complaint alleging infringement of the '284 patent.

3. In another agreement executed simultaneously with the December 27 assignment, Merck and Sumitomo agreed that "[t]he ASSIGNMENT AGREEMENT [December 27 assignment] \* \* \* shall be governed by and construed in accordance with the laws of Japan."

The parties to the December 1983 assignment agreement apparently intended that all questions concerning the meaning and ap-

plication of the agreement would be determined under Japanese law. The question whether the assignment agreement necessarily covered the four other patents in addition to the '284 patent would seem to be the kind of question on which Japanese law would govern.

Sumitomo, however, was not a party to the Commission proceedings. The dispute here is not between the parties to the assignment agreement but between one of those parties and a third person. The provision in the supplementary agreement that Japanese law would determine the meaning and effect of the assignment agreement is the last sentence of a paragraph stating that the "parties" agreed to settle any controversies arising out of the assignment agreement between themselves or, if they could not reach settlement, to settle the controversy through arbitration. The governing law provision which followed may apply only to the resolution of disputes between the parties, and not to the interpretation of the contract for purposes of the present dispute.

If Japanese law should govern, we do not know what that law is. Under United States contract law, the "principal purpose" of the parties to a contract is an important factor in its interpretation. Restatement (Second) of Contracts §§ 200-04 (1979). Similarly, the subjective intent of the parties bears on whether there has been a mistake that may be rectified through avoidance or reformation. *Id.* at §§ 151-58. We do not know whether Japanese law contains similar principles, or whether or to what extent that law permits the terms of a written contract to be explained or varied by parole evidence.

To the extent that Japanese law may be relevant, the Commission will be required to receive evidence or briefs on the question, since in the federal courts foreign law is a question of law to be determined by expert evidence or any other relevant source. Fed. R. Civ. P. 44.1; *see also Bamberger v. Clark*, 390 F.2d 485 (D.C. Cir. 1968). The relevance of Japanese law in interpreting this contract and the determination of what that law is are matters for the Commission to determine in the first instance.

Considering all the circumstances, we conclude that the Commission should not summarily have terminated the investigation. It should have permitted Merck to introduce whatever evidence it has to show the actual intent of the parties to the December 1983 assignment agreement in determining what interest Sumitomo conveyed to Merck under that agreement.

#### CONCLUSION

The order of the Commission summarily terminating the investigation is reversed, and the case is remanded to the Commission for further proceedings consistent with this opinion.

**REVERSED AND REMANDED**

(Appeal No. 85-1277)

**MERCK & CO., INC., PETITIONER V. U.S. INTERNATIONAL TRADE  
COMMISSION, ET AL., RESPONDENTS**

DAVIS, *Circuit Judge*, dissenting.

For the reasons set forth in Part II, A, of the court's opinion, I agree that the assignment of December 27, 1983—if read on its own terms and within its own four corners—cannot be read to have assigned to Merck the four related patents, but solely the '284 patent (of the now relevant patents).

Unlike the court, I believe, however, that that is the only way that assignment should be read in this public International Trade Commission proceeding, involving parties other than just Merck and Sumitomo, and concerning the fulfillment of a patent disclaimer. Sumitomo's patent disclaimer was, of course, a public document on file in the Patent and Trademark Office, intended to be read and understood on its face by all those who sought to discern whether the '284 patent was still alive. Similarly, in my view, the assignment of December 27, 1983 should be able to be read (at least by outsiders) solely on its face and without having to delve into any non-revealed understandings entertained by Sumitomo and Merck between themselves. If, for instance, an outsider—aware of the disclaimer and attempting to discover the current status of the ownership of the '284 patent—had actually come across the December 27, 1983 assignment, he should be able to rely solely on its facial meaning, without more. That is not simply a matter of a right of personal estoppel (because, say, of reliance) but is a result of the public purpose and nature of the disclaimer and of its continued implementation and fulfillment—and the consequent right of all outside persons and entities (*i.e.*, all those other than Merck and Sumitomo) to be able to rely on the face of the involved documents.<sup>1</sup> To my mind, the proper implementation of the system of patent disclaimers calls for that objective and straightforward method of reading documents involved in determining the direct impact of the disclaimer on the life of the patent. I would therefore affirm the Commission.

<sup>1</sup> As between Merck and Sumitomo in a matter not directly involving the disclaimers—for instance, in a suit between them as to the ownership of the four related patents—the rule might well be different.

# Index

## *U.S. Customs Service*

### Treasury Decisions

**Foreign currencies:**

**Quarterly rates:**

	T.D. No.
Oct. 1-Dec. 31, 1985 .....	85-169

**Daily rates:**

Sept. 2-6, 1985 .....	85-170
Sept. 9-13, 1985 .....	85-171
Sept. 16-20, 1985 .....	85-172
Sept. 23-27, 1985 .....	85-173
Sept. 30, 1985 .....	85-174

**Variances:**

Sept. 2-6, 1985 .....	85-175
Sept. 9-13, 1985 .....	85-176
Sept. 16-20, 1985 .....	85-177
Sept. 23-27, 1985 .....	85-178
Sept. 30, 1985 .....	85-179

Liability, limitation of; TIR carnets, Part 18, CR amended .....	85-180
--	--------

Pistachio nuts, country of origin marking .....	85-158
---	--------

Shoes, athletic, classification of; notice of petitioner's desire to protest decision .....	85-181
---	--------

## U.S. Court of Appeals for the Federal Circuit

	Appeal No.
Merck & Co., Inc. v. U.S. International Trade Commission .....	85-1277

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE  
WASHINGTON, D.C. 20229

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300



POSTAGE AND FEES PAID  
DEPARTMENT OF THE TREASURY (CUSTOMS)  
TREAS. 502

CB    SERIA300SDISSDUE054R    1  
SERIALS PROCESSING DEPT  
UNIV MICROFILMS INTL  
300 N ZEEB RD  
ANN ARBOR                      MI 48106

